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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/054, 643	04/03/98	MARESH	J

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EXAMINER

CROW, S

ART UNIT	PAPER NUMBER
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3764

*4*

DATE MAILED:

10/15/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>09/054,643</b>	Applicant(s) <b>Maresh</b>
	Examiner <b>S. Crow</b>	Group Art Unit <b>3764</b>



Responsive to communication(s) filed on Aug 26, 1998

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-20 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because it is unclear whether figure 11 is complete because the right side of the drawing appears to continue beyond the margin . Correction is required.

### ***Claim Rejections - 35 USC § 112***

2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 9 recite first and second rocker links rotatably connected to respective cranks. Are the links pivotally connected to the cranks? Line 8 states that the rocker link is rotatably connected, but aren't they pivotally connected to the frame ?

Claim 7 fails to recite structure which permits the force receiving members to move through more than one path.

Claim 17 cannot be understood. What is meant by the "crank diameter defined by each said crank "[with respect to the force receiving members]? Note that the "means for limiting" and the "means for allowing" displacement may be very small, ie, merely millimeters, depending upon the crank diameter. The term "to be determined" appears to be a hypothetical future event. Perhaps the term "dependent upon the" may be more appropriate.

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***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 5735774. Although the conflicting claims are not identical, they are not patentably distinct from each other because of their common disclosures.

5. Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 5935046. Although the conflicting claims are not identical, they are not patentably distinct from each other because of their common disclosures.

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*Allowable Subject Matter*

6. A claim similar to claim 17 which states pedals which move in a closed loop and having the rocker arms properly described in their connections to the frame and to the cranks, would be considered to distinguish patentably over the art of record in this application.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Crow whose telephone number is (703) 308-3398.

*SR Crow*  
STEPHEN R. CROW  
PRIMARY EXAMINER  
ART UNIT 332